

Internal Revenue Service
memorandum

CC:INTL:230-88

DFBergkuist

date: 7 APR 1988

to: Bob Reinhard
Detroit District

from: Chief, Branch 4 CC:INTL *GMS By APB*

subject: Effective date of Article XXX(2)(a) of the Income Tax
Convention between the United States and Canada.

This is in reply to your request for assistance concerning the effective date of paragraph (2)(a) of Article XXX of the Income Tax Convention between the United States and Canada (the new Convention) that entered into force on August 16, 1984. The new Convention replaces the prior Income Tax Convention between the United States and Canada (the 1942 Convention).

Paragraph (2)(a) of Article XXX of the new Convention provides that, for tax withheld at the source on income referred to in Article X (Dividends), Article XI (Interest), Article XII (Royalties), or Article XVIII (Pensions and Annuities), the new Convention shall enter into effect with respect to amounts paid or credited on or after October 1, 1984.

However, paragraph (5) of Article XXX permits an extension of the effective date of the new Convention where greater relief from tax would have been afforded by any provision of the 1942 Convention. See the Technical Explanation of the new Convention, 1987-47 I.R.B. 7, 34. Thus, pursuant to paragraph (5) of Article XXX, if a particular provision of the 1942 Convention is more favorable to a taxpayer, that provision will continue to have effect for the first taxable year with respect to which the provisions of the new Convention have effect under paragraph (2)(b) of Article XXX even if the provision is not described in paragraph (2)(b).

Paragraph (2)(b) of Article XXX provides that the new Convention shall be effective for taxable years beginning on or after January 1, 1985.

Your inquiry relates to the proper effective date of Article XVIII of the new Convention concerning pensions. Article VIA of the 1942 Convention permits pensions derived within one Contacting State by a resident of the other Contacting State to be exempt from taxation in the former State. Article XVIII of the new Convention permits both Contacting States to tax pension payments. Since the provisions of Article VIA of the 1942 Convention permit greater relief from tax than Article XVIII of

008194

the New Convention, Article VIA will continue to apply for a taxpayer's first taxable year beginning on or after January 1, 1985. For example, for a calendar year taxpayer, the effective date of Article XVIII of the new Convention would be January 1, 1986.

You should also note Rev. Rul. 85-76, 1985-1 C.B. 409, which examines the application of paragraph (2)(b) of Article XXX of the new Convention and is helpful in interpreting paragraph (5) of Article XXX.

We hope that this information will be helpful to you in resolving your issue. Should you have any questions, please contact Mr. David Bergkuist at FTS 566-6457.

cc: Tom Louthan